

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION
CIVIL ACTION NO. 3:13-CV-00706-FDW-DSC**

DUKE ENERGY PROGRESS, INC.,)
)
Plaintiff,)
)
v.)
)
NATIONAL MARINE FISHERIES)
SERVICE, et. al.,)
)
Defendants.)

THIS MATTER is before the Court on the “Motion to Intervene of American Rivers and City of Rockingham, North Carolina” (document #13), Plaintiff’s “Motion to Stay ...” (document #21), and the parties’ associated briefs and exhibits. See documents ## 13-1 through 13-5, 18, 19 and 20.

This Motion has been referred to the undersigned Magistrate Judge pursuant to 28 U.S.C. §636(b)(1), and is now ripe for the Court’s consideration.

The Court has carefully reviewed the record, authorities and the parties’ arguments. Plaintiff filed this action challenging a portion of the Biological Opinion (“ BiOp”) that requires the annual capture, tagging and tissue sampling of every sturgeon in the 188-mile stretch of the Pee Dee River below the Blewett Falls Dam for a period of up to fifty years. Proposed Intervenor’s interests are much broader in scope. See “Reply ...” at 4 (document #20) (“Proposed Intervenor’s have their own issues concerning the validity of the BiOp.”). Proposed Intervenor’s seek to assert cross claims against the Federal Defendants related to water flow issues at the

upstream Tillery Dam and the National Marine Fisheries Services' ("NMFS") "no jeopardy" determination.

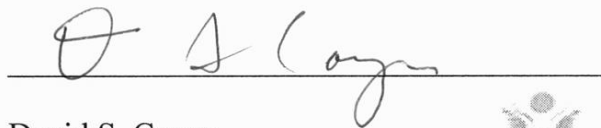
For this reason and the other reasons stated in Plaintiff's and Federal Defendants' briefs, the Court concludes that Proposed Intervenorors have failed to satisfy the requirements for intervention as of right under Fed. R. Civ. P. 24(a). For the same reasons, permissive intervention would not be proper under Fed. R. Civ. P. 24(b). Accordingly, the "Motion to Intervene of American Rivers and City of Rockingham, North Carolina" (document #13) is **DENIED**.

Plaintiff's "Motion to Stay ..." (document #21) is **DENIED** as moot.

The Clerk is directed to send copies of this Order to counsel for the parties, including but not limited to moving counsel; and to the Honorable Frank D. Whitney.

SO ORDERED.

Signed: April 25, 2014

A handwritten signature in black ink, appearing to read "D S Cayer", is written over a horizontal line.

David S. Cayer
United States Magistrate Judge

